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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91201856
Party	Defendant Card Tech International, LLLP
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Submission	Motion to Dismiss - Rule 12(b)
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Date	10/26/2011
Attachments	Motion to Dismiss 91201856.pdf (5 pages)(101028 bytes) Exhibit A Redacted Asset Purchase Agreement.pdf (8 pages)(132366 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**APPLICATION SERIAL NUMBER 85238971
MARK: PROVENPRODUCTS (STYLIZED)**

PRODEEN, INC.,)	
)	
OPPOSER)	
)	
vs.)	OPPOSITION NO. 91201856
)	
CARD TECH INTERNATIONAL, LLLP,)	
)	
APPLICANT)	

**APPLICANT’S MOTION TO DISMISS OPPOSITION FOR
FAILURE TO STATE A CLAIM**

Applicant Card Tech International, LLLP (“Applicant”), by and through its undersigned counsel, hereby moves pursuant to Fed.R.Civ.P. 12(b)(6) to dismiss the opposition of Opposer Prodeen, Inc. (“Opposer”) because the opposition is without legal or factual basis and fails to state a claim upon which relief can be granted. The Opposer’s written statement of opposition presents three bases for the opposition: (1) the Applicant is currently in litigation with the former owner of the Opposer (for which “Proven Products” was an assumed or business name); (2) all rights (to the mark) remain with the current owner until pending litigation in a U.S. District Court (in California) is resolved; and (3) the Applicant is “trying to circumvent the legal system with this application by fraudulently and immorally representing to the USPTO that they (sic) have a legal and financial right to this trademark.”

As summarized in the format of the Trademark Office’s official Notice of Opposition, the grounds for opposition are stated to be (1) immoral or scandalous matter, citing the Trademark

Act, Section 2(a); (2) deceptiveness, citing Act Section 2(a); (3) priority and likelihood of confusion, citing Act Section 2(d); and (4) “other”, followed by the statement that it (the mark) “is a business name that is currently in litigation.”

No reference to any existing registered U.S. trademark or any co-pending trademark application is presented in support of any of the foregoing conclusory statements of the bases for the opposition. See the section of the official Notice of Opposition entitled “Marks Cited by Opposer as Basis for Opposition” bearing the entry “None.” Further, there is nothing in the Opposer’s brief three point statement of opposition which provides any suggestion of how the pending mark could be deemed to contain “immoral or scandalous matter” under Trademark Act Section 2(a), or be deemed “deceptive” under the same section of the Act.

In its Opposition statement, the Opposer asserts that the Applicant is currently in litigation with the former owner of the corporation which is the Opposer. That fact is not disputed, but does not, without more, present any cognizable priority issue or demonstrate likelihood of confusion with goods sold to the relevant public under the mark which is the subject of the pending application No. 85238971 pursuant to the standards of Act Section 2(d).

There is simply no factual allegation made, or legal citation offered, to support the Opposer’s second basis for its opposition, that all rights (to the mark) “remain with the current owner until resolution of the litigation” between Applicant and Opposer’s president. These unsupported assertions of Opposition statement number 2 lead to the allegations in Opposition point number 3 that the applicant is “trying to circumvent the legal system” with its pending application “by fraudulently and immorally representing to the USPTO that they (sic) have a legal and financial right to this trademark”.

Not only is there no evidentiary support offered for the interrelated allegations of Opposition points 2 and 3, but the allegations of both these statements are shown to be baseless, disingenuous and totally without merit in view of a certain Asset Purchase Agreement (the “Agreement”) dated March 8, 2010 by and among Applicant, Opposer, and Opposer’s president (Opposer and its president being referred to together in the said Agreement as “Sellers”), pursuant to which the Sellers conveyed all their right, title and interest in all trademarks used, to any extent, in the cleaning card business to Applicant (“Buyer” in the Agreement). A redacted copy of the said Agreement is attached hereto as Exhibit A and incorporated herein by reference. The Agreement has been redacted so that only those paragraphs relevant to the sale and assignment of Opposer’s interest in the subject mark are presented. A copy of the complete Agreement can readily be provided if deemed necessary.

The ownership by Ms. Provenzano of all the issued and outstanding capital stock of Opposer, and thus her total inclusion as a designated Seller under the said Agreement is clearly stated in Paragraph 8.3 of the Agreement comprising attached Exhibit A. The second recital paragraph states that manufacture and sale of cleaning cards comprise the “Business.” Paragraphs 1.1(d) and 2 of the Agreement expressly state that all of Sellers’ trademarks in the Business are among the Purchased Assets being conveyed to Buyer under the Agreement. Paragraph 8.4 of the Agreement confirms that upon execution of the closing documents the Buyer (Applicant) became vested in good, marketable and valid title to all of the Purchased Assets, free and clear of any lien. Allocation of consideration for the Purchased Assets being conveyed pursuant to the said Agreement, which include all of the Sellers’ right, title and interest in and to Sellers’ trademarks, is specifically referred to in Paragraph 7 of the Agreement.

Finally, the signatures of authorized representatives of the Applicant, the Opposer, (through Ms. Provenzano, its president), and Ms. Provenzano individually, appear at the end of the Agreement, evidencing the completed nature of the Asset Purchase Agreement as of March 8, 2010.

Given the complete and total transfer to Applicant of all Opposer's right, title and interest in and to all its trademarks useful in the cleaning card business pursuant to the Asset Purchase Agreement which is Exhibit A, as well as the numerous other reinforcing paragraphs of that Agreement, it is apparent that Opposer has divested itself of any and all legal interests in the subject mark. Its opposition to the present application premised on unsupported ownership claims which are facially inconsistent with the Agreement Opposer previously entered into, is totally without legal basis.

Because Opposer's opposition statement facially fails to state a claim upon which relief could be granted to it, the opposition should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6).

Dated this 26th day of October, 2011.

By: /s/ Stephen P. Beale
Stephen P. Beale, Esq.
Attorney for Applicant

SKELTON, TAINTOR & ABBOTT
95 Main Street
Auburn, Maine 04210
(207) 784-3200

Certificate of Filing Via Electronic Transmission

I hereby certify that the foregoing Applicant's Motion to Dismiss Opposition for Failure to State a Claim is being filed with the Trademark Trial and Appeal Board of the United States

Patent and Trademark Office via the Board's electronic filing system on October 26, 2011.

By: /s/ Stephen P. Beale
Stephen P. Beale, Esq.
Attorney for Applicant

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Applicant's Motion to Dismiss Opposition for Failure to State a Claim was served by first class mail, postage prepaid, on this 26th day of October, 2011 upon the following:

Sharyn Provenzano, President
Prodeen, Inc.
2454 Briarglen Road
Acton, CA 93510

By: /s/ Stephen P. Beale
Stephen P. Beale, Esq.
Attorney for Applicant

SKELTON, TAINTOR & ABBOTT
95 Main Street
Auburn, Maine 04210
(207) 784-3200



ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of the 8th day of March, 2010, by and among **CARD TECH, LLLP**, a Maine limited liability limited partnership (the "Buyer"), **PRODEEN, INC. (d/b/a Proven Products)**, a California corporation ("Prodeen"), and **SHARYN PROVENZANO (a/k/a Sharyn Nappi)** of Acton, California ("Sharyn"), and together with Prodeen, collectively referred to herein as the "Sellers").

WITNESSETH:

WHEREAS, Sharyn is the owner of all of the issued and outstanding capital stock of Prodeen; and

WHEREAS, Prodeen is engaged in the business of manufacturing and selling cleaning cards (the "Business"); and

WHEREAS, the Buyer desires to purchase from the Sellers, and the Sellers desire to sell to Buyer, certain assets related to the Business; and

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties hereby agree as follows:

1. **Definitions.** In addition to those terms defined elsewhere in this Agreement, the following terms shall have the following meanings when used herein:

1.1 **"Purchased Assets"** means the following assets of the Sellers:

(d) all of the Sellers' right, title, and interest in and to all of the trademarks, trade names, and dbas/assumed names used to any extent in the operation of the Business or otherwise related thereto, including, but not limited to, the items described on Schedule 1.1(d) attached hereto;

1.5 **"Parties"** means, collectively, the Buyer, Prodeen, and Shatyn. Each of the Parties is herein referred to as a **"Party."**

2. **Purchase and Sale of Purchased Assets.** The Sellers hereby sell, assign, convey, transfer and deliver to the Buyer, and the Buyer hereby purchases from the Sellers, all of the Purchased Assets, free and clear of any Lien.

7. **Allocation of Purchase Price.** The Purchase Price shall be allocated to the Purchased Assets as set forth on Schedule 7 attached hereto. The Buyer and the Sellers agree to use such allocations for all tax reporting purposes, including, but not limited to, preparation of IRS Form 8594 for their respective federal income tax returns, and not to assert any other allocation in connection with any tax return, audit or similar proceeding.

8. **Representations and Warranties of the Sellers.** The Sellers, jointly and severally, represent and warrant the following to the Buyer as of the date hereof:

8.3 Sole Shareholder. Sharyn owns all of the issued and outstanding capital stock of Prodeen, free and clear of any Lien.

8.4 Purchased Assets. The Sellers have good, marketable, and valid title to all of the Purchased Assets, free and clear of any Lien, and the instruments of transfer contemplated by Section 10.1 hereof shall vest in the Buyer good, marketable, and valid title to all of the Purchased Assets, free and clear of any Lien.

8.6 Intellectual Property.

(a) To the Sellers' knowledge, neither the Sellers, nor the use of any of the Purchased Assets, has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any intellectual property or other rights of any third party, and the Sellers have not received any charge, complaint, claim, demand, or notice alleging any such interference, infringement, misappropriation, or violation (including any claim that either of the Sellers must license or refrain from using any intellectual property or other rights of any third party). To the knowledge of the Sellers, no third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any of the Sellers' intellectual property assets.

(b) Neither of the Sellers owns or has any rights in or to any patents or patent applications. Neither of the Sellers has granted a license or any other rights to any third party with respect to any of the Purchased Assets.

10. **Actions at Closing.** At the Closing:

10.1 **Instruments of Transfer.** The Sellers covenant and agree to (a) deliver to the Buyer possession and good and marketable title to the Purchased Assets, free and clear of all Liens, and (b) execute and deliver to the Buyer a bill of sale and all other documents, instruments, and certificates necessary to effect the Closing, such bill of sale and other documents, instruments, and certificates to be in form(s) reasonably satisfactory to the Buyer.

(a) **“Adverse Consequences”** means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, amounts paid in settlement, liabilities, obligations, taxes, security interests, losses, expenses, and fees, including court costs and reasonable attorneys’ fees and expenses.

13.3 Sellers’ Indemnification Obligations. The Sellers, jointly and severally, covenant and agree to defend, indemnify and hold the Buyer and its successors and assigns, harmless from and against:

(a) Any and all Adverse Consequences resulting from, arising out of, based upon, relating to, or caused by any inaccuracy of any representation or warranty made by any of the Sellers herein or in any other Transaction Document, any breach or misrepresentation of any such representation or warranty, or any breach of or failure to comply with any covenant or other agreement made by any of the Sellers herein or in any other Transaction Document; and

The Parties have executed this Agreement on the day and year first above written.

CARD TECH, LLLP

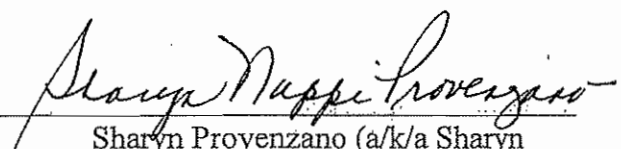
By: 

Stephen Farrar, President

PRODEEN, INC.

By: 

Sharyn Provenzano, President


Sharyn Provenzano (a/k/a Sharyn
Nappi)